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EXAMINER

SAFAVI, MICHAEL

ART UNIT	PAPER NUMBER
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3673

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/820,834

Applicant(s)

LAPOINTE ET AL.

Examiner

M. Safavi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21 and 22 is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☒ Claim(s) 17 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

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*Drawings*

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on November 26, 2002 have been approved. Applicants' remarks with respect to the difference in cross hatching between the socket member 28 and the post segment 20 is being regarded as a further indication of the proposed changes set forth in the proposed drawing correction of June 18, 2002 with such differentiation not having been previously noted or highlighted.

*Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-9 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not provide support for and the originally filed disclosure does not appear to have presented any provision for "said socket member being received in an axially non-interfering relationship within said outer sleeve".

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "said socket member being received in an axially non-interfering relationship within said outer sleeve" when it is not apparent from the specification as to how the socket member 28 is received in an axially non-interfering relationship within said outer sleeve 26. The instant disclosure fails to specify that such a relationship is non-interfering and appears to describe somewhat of an interfering fit relationship between the socket member and the outer sleeve.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

6. Claims 10, 11, 14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Hall et al. Hall et al. shows, Figs. 2, 3 and 5, footing comprised of outer sleeve 12, socket

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member 17 press fitted therein, with elongated post segment 20, and connector 18 inserted into the elongated post segment and the socket member for joining the post segment to the footing. Outer sleeve is flattened as can be seen at tip thereof for easy insertion into the ground. Stabilizer 27 is removably fitted over the outer sleeve.

7. Claims 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Aberle. Aberle shows, Figs. 1 and 2, footing comprised of outer sleeve 30, socket member 12 press fitted therein, with elongated post segment 16 and connector 58 axially inserted into the socket member with above ground post segment thereover. Footing is inserted into the ground with socket member 22a attached to outer sleeve 22.

8. Claims 10, 11, 12, and 14 are rejected under 35 U.S.C. 102(a) as being anticipated by Krinner Krinner shows, Fig. 7, footing comprised of outer sleeve 6, socket member 16/18 press fitted therein. An upper end of the socket member 16/18 being leveled with a trailing end of the outer sleeve 6. Outer sleeve is flattened as can be seen at tip 12 for easy insertion into the ground. Footing is inserted into the ground with socket member 22a attached to outer sleeve 22.

9. Claims 10, 11, 14, 15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Connors. Connors shows, Figs. 1 and 2, footing comprised of outer sleeve 1/2, socket member 7 press fitted therein. Outer sleeve is flattened as can be seen at tip thereof for easy insertion into

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the ground. Stabilizer 20 is removably fitted over the outer sleeve. Footing is inserted into the ground with socket member 7 attached to outer sleeve 1/2. Outer sleeve 1/2 can be seen as having a square cross section with the socket 7 possessing an elliptical cross section.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hall et al.

To have formed the Hall et al. components 12 or 17 of a galvanized or non-galvanized material, thus utilizing any and all advantages of using such well known material and metals including interchangeability of types of materials or parts, would have constituted an obvious expedient to one of ordinary skill in the art.

12. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aberle.

To have formed the Aberle components 30 or 12 of a galvanized or non-galvanized material, thus utilizing any and all advantages of using such well known material and metals including interchangeability of types of materials or parts, would have constituted an obvious expedient to one of ordinary skill in the art.

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13. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Connors.

To have formed the Connors components  $\frac{1}{2}$  or 7 of a galvanized or non-galvanized material, thus utilizing any and all advantages of using such well known material and metals including interchangeability of types of materials or parts, would have constituted an obvious expedient to one of ordinary skill in the art.

14. Claims 17 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. Claims 21 and 22 are allowed.

### ***Response to Arguments***

Applicant's arguments filed November 26, 2002 have been fully considered but they are not persuasive. Applicants' arguments with respect to Hall et al. appear directed to method of assembly or method of insertion when the language of the rejected claims is directed to an article of manufacture. As such, Hall et al. does serve to read upon the language of those claims rejected over Hall et al.

As for the rejection of claims over Aberle, the recitation of "...protected against deformation while being implanted" or "thereby protecting the socket member against deformation" is directed to a desired or presumed effect and does not serve to define structure

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readable over the applied prior art. Aberle may and can be protected from deformation depending on the substrate and force of blows upon the footing. And, any force upon the leading end of the instant invention would be transmitted to the socket member 28 as such is force or pressure fitted within outer sleeve 26. Otherwise, there appears no limitation within the rejected claims which would serve to preclude "impact...transmitted directly" to the socket member.

With regard to Krinner, Krinner does teach "placing a socket member in an axially non-interfering relationship within an outer protective sleeve". Otherwise, Applicants' arguments appear directed to method of assembly or method of insertion. And, as stated above, the recitation of "...protected against deformation while being implanted" or "thereby protecting the socket member against deformation" is directed to a desired or presumed effect and does not serve to define structure readable over the applied prior art. Krinner may and can be protected from deformation depending on the substrate and force of blows upon the footing. And, any force upon the leading end of the instant invention would be transmitted to the socket member 28 as such is force or pressure fitted within outer sleeve 26. Otherwise, there appears no limitation within the rejected claims which would serve to preclude a "transfer [of] any impact" to the socket member.

As for Conners, it is not seen how socket member 7 does not form part of the Conners footing. And, socket member 28 of the instant invention appears "rigidly connected" to the outer sleeve 26.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (703) 308-2168.



**MICHAEL SAFAVI  
PRIMARY EXAMINER  
ART UNIT 354**

M. Safavi  
February 21, 2003